

## HOUSE BILL NO. 7

INTRODUCED BY D. BARRETT

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE WATER ADJUDICATION FEE AND REPLACING THE FUNDING WITH A TRANSFER FROM THE GENERAL FUND OF \$31 MILLION; PROVIDING AN APPROPRIATION FROM THE WATER ADJUDICATION ACCOUNT; AMENDING SECTIONS 15-1-216, 85-2-270, 85-2-271, 85-2-272, 85-2-280, 85-2-281, 85-2-283, MCA, AND SECTION 15, CHAPTER 288, LAWS OF 2005; REPEALING SECTIONS 85-2-273, 85-2-276, AND 85-2-279, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Transfer of funds.** There is transferred \$31 million from the general fund to the water adjudication account provided for in 85-2-280 to be used for the purposes of water adjudication.

**NEW SECTION. Section 2. Appropriation -- carryforward of balance.** (1) There is appropriated \$31 million from the water adjudication account provided for in 85-2-280 to the department of natural resources and conservation and the Montana water court to be allocated as provided in 85-2-280.

(2) Subject to the provisions of 85-2-280, the unexpended portion of the appropriation may be carried forward until June 30, 2020.

**Section 3.** Section 15-1-216, MCA, is amended to read:

**"15-1-216. (Temporary) Uniform penalty and interest assessments for violation of tax provisions -- applicability -- exceptions.** (1) (a) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of \$200 or the amount of the tax due, whichever is less.

(c) A person who fails to pay a tax when due must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 18% of the tax due. The penalty accrues

1 on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an  
2 extension of time for filing a return.

3 (d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal  
4 to 25% of the tax due or \$200, whichever is less, plus interest as provided in subsection (2).

5 (2) Interest on taxes not paid when due must be assessed at the rate of 12% a year. Interest on  
6 delinquent taxes and on deficiency assessments is computed from the original due date of the return until the  
7 tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether  
8 the taxpayer has received an extension of time for filing the return.

9 (3) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other  
10 assessments imposed under Titles 15 and 16 ~~and 85-2-276~~.

11 (b) This section does not apply to:

12 (i) property taxes;

13 (ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15,  
14 chapter 70; or

15 (iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law.

16 **15-1-216. (Effective January 1, 2007) Uniform penalty and interest assessments for violation of**  
17 **tax provisions -- applicability -- exceptions -- uniform provision for interest on overpayments.** (1) A person  
18 who fails to file a required tax return or other report with the department by the due date, including any extension  
19 of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due,  
20 whichever is less.

21 (2) (a) Except as provided in subsection (2)(b), a person who fails to pay a tax when due must be  
22 assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not  
23 exceed 12% of the tax due.

24 (b) A person who fails to pay a tax when due under chapter 30, part 2, chapter 53, chapter 65, or  
25 chapter 68 must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax.  
26 The penalty may not exceed 15% of the tax due.

27 (c) The penalty imposed under subsection (2)(a) or (2)(b) accrues on the unpaid tax from the original  
28 due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

29 (3) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return  
30 when due or fails to file a return within 60 days after receiving written notice from the department that a return

1 must be filed is liable for an additional penalty of not less than \$1,000 or more than \$10,000. The department  
2 may bring an action in the name of the state to recover the penalty and any delinquent taxes.

3 (4) (a) Interest on taxes not paid when due must be assessed by the department. The department shall  
4 determine the interest rates established under subsection (4)(a)(i) for each calendar year by rule subject to the  
5 conditions of this subsection (4)(a). Interest rates on taxes not paid when due for a calendar year are as follows:

6 (i) For individual income taxes not paid when due, including delinquent taxes and deficiency  
7 assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the  
8 secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue  
9 Code, 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

10 (ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and  
11 deficiency assessments, the interest rate is 12%.

12 (b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date  
13 of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return  
14 regardless of whether the taxpayer has received an extension of time for filing the return.

15 (5) (a) Except as provided in subsection (5)(b), this section applies to taxes, fees, and other  
16 assessments imposed under Titles 15 and 16 ~~[and 85-2-276]~~.

17 (b) This section does not apply to:

18 (i) property taxes; or

19 (ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15,  
20 chapter 70.

21 (6) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate  
22 in effect at the time the tax accrued.

23 (7) Penalty and interest must be calculated and assessed commencing with the due date of the return.

24 (8) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

25 (9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or  
26 delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the  
27 interest rate determined in subsection (4)(a)(i). ~~(Bracketed language in subsection (5)(a) terminates June 30,~~  
28 ~~2020--sec. 18, Ch. 288, L. 2005.)"~~

29  
30 **Section 4.** Section 85-2-270, MCA, is amended to read:

1           **"85-2-270. (Temporary) Findings -- purpose.** (1) The purpose of 85-2-270 through ~~85-2-273,~~  
2 ~~85-2-276, 85-2-272 and 85-2-279~~ 85-2-280 through 85-2-283 is to ~~generate revenue to~~ adequately fund  
3 ~~Montana's water adjudication in Montana program~~ to:

4           (a) complete claims examination and the initial decree phase;

5           (b) reexamine claims in basins that were verified and were not subject to the supreme court examination  
6 rules when the water court has received a petition and issued an order pursuant to 85-2-282 or the water court  
7 has issued an order on its own initiative; and

8           (c) ensure that the product of the adjudication is enforceable decrees.

9           (2) With adequate funding, it is realistic and feasible for the department to complete claims examination  
10 and reexamination of verified basins for which the water court has received a petition and issued an order  
11 pursuant to 85-2-282 or the water court has issued an order on its own initiative by June 30, 2015. It is also  
12 realistic and feasible for the water court to issue a preliminary or temporary preliminary decree by June 30, 2020,  
13 for all basins in Montana.

14           (3) It is essential to preserve the trust that the water users of Montana have placed in the legislature by  
15 ensuring that the ~~revenue generated by the water adjudication fee established in 85-2-276~~ water adjudication  
16 account is used only for the purpose of adjudicating Montana's water rights. (Terminates June 30, 2020--sec.  
17 18, Ch. 288, L. 2005.)"

18  
19           **Section 5.** Section 85-2-271, MCA, is amended to read:

20           **"85-2-271. (Temporary) Benchmarks -- action taken if not met.** (1) The completion of initial claims  
21 examination is of a higher priority than reexamination of claims that were subject to the verification process  
22 unless the chief water judge issues an order making reexamination a higher priority, as provided in subsection  
23 (3)(b).

24           (2) There are approximately 57,000 water right claims that were filed pursuant to 85-2-212 that must  
25 be examined. There are approximately 98,000 claims that were verified that may be reexamined using the  
26 supreme court examination rules if the water court receives a petition and issues an order as provided in  
27 85-2-282 or the water court issues an order on its own initiative.

28           (3) (a) The water court shall prioritize basins for the purpose of claims examination and reexamination  
29 by the department.

30           (b) The chief water judge has the authority to order that reexamination be completed for a certain basin

in a higher priority than claims examination. If the chief water judge issues an order requiring the department to reexamine claims rather than examining claims, the number of claims that were reexamined must be counted against the amount of claims that the department is required to examine for that period.

(4) (a) The cumulative benchmarks that are provided in subsection (4)(b) must be met. If the benchmarks are not met, the funds remaining in the water adjudication account provided for in 85-2-280 must be returned to the general fund ~~fee contained in 85-2-276 that is attached to a water right for the purpose of funding the adjudication may not be assessed the following even-numbered year.~~ All claims must be examined by June 30, 2015.

(b) The cumulative benchmarks are as follows:

Date	Total Number of Claims Examined
December 31, 2006	8,000
December 31, 2008	19,000
December 31, 2010	31,000
December 31, 2012	44,000
June 30, 2015	57,000

(Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

**Section 6.** Section 85-2-272, MCA, is amended to read:

**"85-2-272. (Temporary) Definitions.** For the purposes of 85-2-270 through ~~85-2-273, 85-2-276,~~ 85-2-272 and ~~85-2-279~~ 85-2-280 through 85-2-283, ~~the following definitions apply:~~

—— (1) ~~"Calculated volume" means the feasible volume given the flow rate and period of use.~~

—— (2) ~~"Person" means an individual, corporation, partnership, association, firm, or other legal entity.~~

—— (3) ~~"Water right"~~ "water right" means a legal right to the beneficial use of water as recorded in the centralized water recording system by a water court decree, provisional permit, ground water certificate, filed exempt right, Powder River declaration, statement of claim, stockwater permit, temporary provisional permit, or 1962 to 1973 ground water filings as recorded with the department or that portion of a water reservation that has been put to beneficial use. This definition applies only to the use of the term for the purposes of ~~assessing the fee and~~ 85-2-270 through ~~85-2-273, 85-2-276,~~ 85-2-272 and ~~85-2-279~~ 85-2-280 through 85-2-283. (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

**Section 7.** Section 85-2-280, MCA, is amended to read:

**"85-2-280. (Temporary) Water adjudication account.** (1) There is a water adjudication account within the state special revenue fund created in 17-2-102.

(2) (a) For the period beginning July 1, 2005, and ending June 30, 2015, there is allocated to the department and the water court up to \$2.6 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the water adjudication account for the sole purpose of funding the water adjudication program. These funds may not be used for the purpose of updating or maintaining a computer database.

(b) For the period beginning July 1, 2015, and ending June 30, 2020, there is allocated to the department and the water court up to \$1 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the account for the sole purpose of funding the water adjudication program.

(c) The allocations in subsections (2)(a) and (2)(b) are subject to appropriation by the legislature.

(3) (a) Subject to subsection (3)(b), the total amount of revenue money deposited in the water adjudication account ~~from the fee provided for in 85-2-276~~ may not exceed \$31 million plus interest and earnings on the account.

(b) If federal funds are appropriated for the purposes of 85-2-270 through ~~85-2-273, 85-2-276, 85-2-272~~ and ~~85-2-279~~ 85-2-280 through 85-2-283, ~~the maximum amount that may be deposited in the account must be reduced by an amount equal to~~ the amount of federal funds appropriated must be transferred from the account to the general fund.

~~(c) Once revenue generated from the fees provided for in 85-2-276 and any federal revenue appropriations have reached \$31 million, the fee may no longer be assessed.~~

(4) Interest and income earnings on the water adjudication account must be deposited in the account.

(5) Revenue remaining in the water adjudication account on June 30, 2020, must be transferred to the ~~water right appropriation account provided for in 85-2-318~~ general fund. (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

**Section 8.** Section 85-2-281, MCA, is amended to read:

**"85-2-281. (Temporary) Reporting requirements.** The department and the water court shall:

(1) provide reports to the environmental quality council at each meeting during a legislative interim on:

1           ~~(a) the progress of the adjudication; and~~  
2           ~~—— (b) the total revenue generated by the fees established in 85-2-276 and deposited in the account~~  
3           ~~provided for in 85-2-280;~~

4           (2) include a status report on the adjudication in their presentation to the applicable appropriation  
5           subcommittees during each legislative session; and

6           (3) provide a budget that outlines how each of the entities will be funded in the next biennium, including  
7           general fund money, state special revenue funds, and the allocated ~~fee revenue~~ funds from the water  
8           adjudication account provided for in 85-2-280. (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

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10           **Section 9.** Section 85-2-283, MCA, is amended to read:

11           **"85-2-283. (Temporary) Rulemaking authority.** The department may adopt rules for the purpose of  
12           implementing 85-2-270 through ~~85-2-273, 85-2-276, 85-2-272~~ and ~~85-2-279~~ 85-2-280 through 85-2-283.  
13           (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

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15           **Section 10.** Section 15, Chapter 288, Laws of 2005, is amended to read:

16           **"Section 15. Contingent voidness.** If at least \$2 million is not appropriated ~~in a line item~~ for each fiscal  
17           year from state sources other than the water adjudication account provided for in [section 7], for the purposes  
18           of funding Montana's water adjudication ~~program~~, then [this act] is void."

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20           NEW SECTION. **Section 11. Repealer.** Sections 85-2-273, 85-2-276, and 85-2-279, MCA, are  
21           repealed.

22  
23           NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

24                                   - END -